



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-05

**SUBJECT: SPECIAL PAROLE PLAN CONSIDERATIONS FOR INMATES
SUBJECT TO DEPORTATION**

INTRODUCTION

This Administrative Directive clarifies special factors to be considered at parole hearings when an inmate is subject to deportation by Immigration and Customs Enforcement (ICE).

LEGAL AUTHORITY

California Code of Regulations (CCR), title 15, section 2281(d)(8) states that a panel, in determining an inmate's suitability for parole, may consider that "[t]he prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release."

In re Andrade (2006) 141 Cal.App.4th 807 held that the Board cannot require parole plans in California and Mexico when the probability of deportation is high. Specifically, the court found that "[b]y requiring petitioner to develop parole plans in both California and Mexico, the Board is holding him to a higher standard than the standard required by California Code of Regulations, title 15, section 2402. . . . Accordingly, he need only have realistic parole plans in Mexico to satisfy the requirements of section 2402, subd (d)(8)." (*Id.* at pp. 817-818.)

However, "In construing this regulation we are not holding that the Board is barred from ever requiring a prisoner facing deportation to develop parole plans in the state. It may be that because of other circumstances (e.g., inmate not convicted of an aggravated felony or the inmate is eligible for asylum), that a prisoner's deportation is not a near-certainty. . . . In many cases, . . . the Board would be able to discharge its responsibility by conditioning parole upon a prisoner's release to [ICE] custody. [Citations]." (*Id.* at p. 818.)

DISCUSSION

Pursuant to CCR, title 15, section 2281(d)(8), a parole panel should consider an inmate's plans for release when deciding whether to grant parole. Such inquiries are case specific and should focus on the viability of the inmate's plans (i.e., whether they are realistic). Based on *In re Andrade*, if the panel determines there is a high probability the inmate will be deported¹ then the hearing panel may not require California parole plans. However, if it is uncertain whether an inmate will be deported the hearing panel may inquire into California parole plans.

For example, if the inmate is contesting the deportation order or seeking asylum in the United States, then it is unlikely that the inmate will be deported. Also, if the inmate's deportation order involves a country that does not have an extradition treaty with the United States then it is unlikely the inmate will be deported. In such a case, the panel should instead inquire into the inmate's plans for release in California. A list of non-treaty countries is attached to this administrative directive.

DIRECTIVE

When deciding whether to ask an inmate who is not a United States citizen about their plans for release in California, a parole panel need not determine whether the inmate will actually be deported (that decision will be reached by an immigration judge) but simply determine how likely it is that the inmate will be deported. If it is a near certainty that an inmate will be deported, then the panel shall not deny parole based on the lack of realistic plans for release in California. However, if it is uncertain that an inmate will be deported, then the panel may deny parole if the inmate's plans for release in California pose an unreasonable risk of danger to society.

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.

APPROVED BY: _____

JENNIFER P. SHAFFER
Executive Officer, BPH

DATE: _____

¹ If an inmate who is not a United States citizen is granted parole, he or she is transferred to an ICE detention center and scheduled for deportation proceedings before an immigration judge. At the hearing, the judge considers many factors when deciding whether or not to order the inmate's deportation, including whether there is a treaty with the destination country, the nature of the inmate's crime, the inmate's medical condition, whether the inmate is contesting deportation or seeking asylum, among other things.



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-06

SUBJECT: PRESENTATION OF DOCUMENTS BY AN INMATE AT A HEARING

INTRODUCTION

This Administrative Directive outlines a prisoner's right to bring documents to a hearing and actions the panel may take to facilitate the consideration of those documents.

LEGAL AUTHORITY

California Code of Regulations, title 15, section 2249 provides that, "A prisoner shall have the right to present relevant documents to the hearing panel. The documents should be brief, pertinent, and clearly written. They may cover any relevant matters such as mitigating circumstances, disputed facts or release planning. A copy of the documents may be placed in the prisoner's central file."

DIRECTIVE

Parole panels shall consider any relevant documents brought to a hearing by a prisoner that are brief, pertinent and clearly written. However, if the panel determines that the documents do not meet one of these criteria, the panel may do any of the following:

1. Allow the prisoner to summarize the pertinent contents of the documents in his or her closing statement;
2. Allow the prisoner's attorney to summarize the pertinent contents of the documents in his or her closing statement; or
3. Advise the prisoner that an attempt will be made to review the documents during recesses and deliberations.

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.

APPROVED BY:

JENNIFER P. SHAFFER
Executive Officer, BPH

DATE: _____

**BOARD OF PAROLE HEARINGS
Training Advisory Committee Meeting
Minutes
Monday, August 19, 2013**

Meeting called to order at 2:08 p.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Turner and Roberts were present.

CONSENT CALENDAR

Comments Regarding the Training Committee Meeting Minutes of June 18, 2013:

No comments.

Public Comment: No comments.

Commissioner ANDERSON made a motion to approve the meeting minutes. The motion was seconded by Commissioner TURNER. The motion carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer JENNIFER SHAFFER:

SHAFFER reported that the last two commissioners, Montes and Singh are now attending the National Judicial College. When two new commissioners are appointed, they will attend as well.

SHAFFER reported that the week-long Board training sessions for Commissioners and Deputy Commissioners will be moved to October and May to avoid the holiday season. The dates for the October training will be October 14-18.

SHAFFER also reported that the dates for the inmate counsel training will be October 16, 2013 (in northern California) and October 18, 2013 (in southern California).

Report from Chief Counsel HOWARD MOSELEY:

MOSELEY reported that the reason the commissioner training dates overlap with the inmate counsel training dates was to avoid the need to cancel any hearings.

MOSELEY reported that the Transcript Analysis Program (TAP) changes suggested at the last committee meeting have been incorporated. The Program was revised to provide for a TAP review for new commissioners to be conducted once each quarter. The commissioners felt that more frequent TAPs would be helpful. The assigned attorney will also review any writs that have been issued and anything in particular a commissioner might request for inclusion in the review. Commissioners should make their requests of the Legal Division prior to their TAP

appointment. Also included in the program now is the observation component where the reviewing attorney observes the commissioner at a hearing and gives feedback to the commissioner at the TAP appointment.

Report from Chairperson, Commissioner ROBERTS:

Commissioner ROBERTS reported that the evaluations of the May 2013 training conference have been tabulated and they are all positive. Recommendations were received for improving the disability training segment in the future.

The Committee received input and ideas for the October training conference agenda. Input was received from Life Support Alliance and several show good promise. Training will be in closed session on Thursday afternoon and Friday morning. All others should be open to the public.

MOSELEY stated that the Legal Division has also received input and will give training on rescission hearings based on feedback from the commissioners. The Legal Division will also develop training on issues relating to waivers for presentation during the October training conference.

Commissioner ROBERTS reported that discussions are in progress with respect to updating access to training materials by posting them on the Internet and/or Intranet.

OPEN COMMENTS

Agenda Items for Future Meetings:

Commissioner GARNER spoke about events at San Quentin with the extensive movement of life prisoners due to valley fever. The movement of the prisoners delayed some prisoners from getting into programs.

Commissioner FRITZ commented that members of the Training Advisory Committee could be assigned to arrange for speakers at the October training.

Commissioner ROBERTS noted that Jerome [Hessick] is the contact person and the person who will coordinate the speakers. Much of the legal staff will also assist.

Commissioner FRITZ stated that they would like to get involved.

Commissioner ROBERTS said they should contact Jerome directly.

Open Comment:

VANESSA NELSON-SLOANE of Life Support Alliance stated that the training for inmate counsel is good but wanted to know if that training is open to other members of the public.

SHAFFER asked MOSELEY to look into that question.

Meeting adjourned at 2:20 p.m.

BOARD OF PAROLE HEARINGS
Best Practices Advisory Committee Meeting
Minutes
Monday, July 15, 2013

Meeting called to order at 3:20 p.m.

Roll Call: Commissioners Ferguson, LaBahn, Peck, Zarrinnam and Fritz were present.

CONSENT CALENDAR

Comments Regarding Best Practices Advisory Committee Meeting Minutes of May 20, 2013: No comments.

Public Comment: No comments.

Commissioner ZARRINNAM made a motion to approve the consent calendar. The motion was seconded by Commissioner LABAHN. The motion carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer JENNIFER SHAFFER:

No report.

Report from Chief Counsel HOWARD MOSELEY:

MOSELEY stated that he is happy to report that the case compendium has been completed. Copies have been given to all of the commissioners. The compendium has eight cases included, and the Legal Division will brief further cases as needed. MOSELEY indicated that appellate court cases have not been included because of the sheer number of them, however, individual appellate cases will be added to the compendium, upon request by a commissioner.

Report from the Chairperson, Commissioner FRITZ:

Commissioner FRITZ acknowledged that commissioners will request briefings of appellate court cases as needed.

MOSELEY commented that the draft bench guide still needs to be reviewed. MOSELEY indicated that he has spoken with Executive Officer SHAFFER about available staff to review the bench guide.

Commissioner FRITZ indicated this was good news as they would like to get it completed as soon as possible, and perhaps the last part of the mini-manual could be reviewed as well.

MOSELEY indicated that the bench guide is a public document whereas the case compendium is not.

Commissioner FRITZ indicated a desire to have these guides completed by the next committee meeting. Commissioner FERGUSON'S assignment will be reassigned because of his retirement. New assignments will be made by September 1, 2013.

DISCUSSION ITEMS

Administrative Directive 2013-05, Pre-Hearing Review of Requests for Waivers, Stipulations, and Postponements, presented by Katie Riley, Senior Staff Attorney

RILEY presented the draft administrative directive. Voluntary waivers submitted 45 calendar days or more before the scheduled hearing will be presumed valid. Voluntary waivers submitted less than 45 calendar days prior to the scheduled hearing are presumed invalid and shall only be approved under certain circumstances.

MOSELEY clarified that the directive focuses on the handling of the paperwork associated with waivers, stipulations and postponements.

Commissioner FRITZ asked whether a request is valid when submitted 45 days or more before the scheduled hearing with only the inmate's signature but the attorney's signature is received when there are fewer than 45 days before the hearing.

RILEY responded that this would be valid.

Commissioner FRITZ asked about postponements and the 45 day window.

RILEY responded that she would provide additional information.

MOSELEY indicated that the good cause requirement applies to both waivers and postponements though the regulations do not provide for the 45-day timeframe with respect to postponements.

Commissioner FRITZ asked whether a postponement could be submitted anytime.

RILEY indicated yes, but further discussion is needed.

Commissioner FRITZ indicated that she would like the description of good cause broken down further.

RILEY agreed with the suggestion.

Commissioner PECK expressed agreement.

Commissioner FERGUSON commented that he has heard from inmate attorneys that the board packet is often not received timely.

MOSELEY indicated that the good cause requirement may need to have its own administrative directive.

MOSELEY stated that in light of the commissioner's suggestions, the administrative directive needs further work and will not be forwarded to the full board until a later date.

Commissioner FRITZ commented that an all-in-one directive might be better.

MOSELEY responded that they will at least be together, numbered consecutively, and each will be referenced in the other.

Commissioner FRITZ agreed with the suggestion. She also noted that if there were any other comments or suggestions she would refer them to the Legal Division.

SHAFFER requested time for input on the administrative directive from inmate attorneys.

OPEN COMMENTS

Agenda items for future meetings: None.

Open Comment: None.

Meeting adjourned at 3:50 p.m.